

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONOVAN SHANE GREER,
Plaintiff,
v.
KCSO ADMINISTRATION, et al.,
Defendants.

Case No. 1:21-cv-00108-JLT (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO EXHAUST**

21-DAY DEADLINE

Donovan Shane Greer initiated this action on December 18, 2020. In his complaint, Plaintiff alleges that prison officials have violated his rights under the Eighth Amendment by failing to adequately sanitize his living quarters and failing to test him for COVID-19. (Doc. 1.) Plaintiff states that he first requested testing and sanitization from prison officials on November 11, 2020, but that he had not received a response at the time he submitted his complaint on December 8, 2020. (*See id.* at 4, 5.) Thus, it is clear that Plaintiff failed to exhaust administrative remedies prior to filing suit.

The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect to prison conditions under . . . any other Federal law . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation omitted). The

1 exhaustion requirement applies to all inmate suits relating to prison life, *Porter v. Nussle*, 534
2 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or offered by the
3 administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Inmates are required to
4 “complete the administrative review process in accordance with the applicable procedural rules,
5 including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548
6 U.S. 81, 88, 93 (2006). Generally, failure to exhaust is an affirmative defense that the defendant
7 must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if
8 failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166
9 (9th Cir. 2014).

10 It is clear on the face of his complaint that Plaintiff failed to exhaust administrative
11 remedies prior to filing suit. Accordingly, within 21 days of the date of service of this order,
12 Plaintiff SHALL show cause in writing why this action should not be dismissed for his failure to
13 exhaust. Alternatively, within that same time, Plaintiff may file a notice of voluntary dismissal.
14 Failure to comply with this order will result in a recommendation that this action be dismissed.
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16 IT IS SO ORDERED.

17 Dated: June 9, 2021

18 _____ /s/ **Jennifer L. Thurston**
19 CHIEF UNITED STATES MAGISTRATE JUDGE

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